

JEANNE G. OWENS

IBLA 80-222

Decided May 7, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, holding the Tony and SJJ # 1 mining claims abandoned and void. MCA-MT-04.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

APPEARANCES: Jeanne G. Owens, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jeanne G. Owens appeals the decision of the Montana State Office, Bureau of Land Management (BLM), dated December 5, 1979, declaring the Tony and SJJ # 1 mining claims abandoned and void.

The decision stated that BLM is without authority to accept a certificate of location of a mining claim, with a date of location prior to October 21, 1976, which was not filed with BLM on or before October 22, 1979. Appellant's claims were located prior to October 21, 1976. Appellant's filings were not received by BLM until November 29, 1979. BLM indicated that failure to file within the time period shall be deemed conclusively to constitute an abandonment of the mining claims pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

[1] On appeal, appellant states that she sent the documents to the Montana Department of Natural Resources instead of the BLM Montana State Office. She mailed the documents to BLM as soon as she received them back from the Department of Natural Resources. Appellant also states that the claims were filed with the county within the time limit. These reasons afford no basis for relief here.

Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice or certificate of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

Appellant did not file the documents required with the BLM office on or before October 22, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void 43 U.S.C. § 1744 (1976); 43 CFR 3833.4. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ There is no information that appellant filed evidence of annual assessment work or a notice of intention to hold the mining claim as required by 43 CFR 3833.2-1(a). Failure to file the documents required by 43 CFR 3833.2-1 would also constitute an abandonment of the mining claim.

